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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,423	08/24/1999	JEFFRY JOVAN PHILYAW	PHLY-24.739	5217

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EXAMINER	
BROWN, RUEBEN M	

ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
05/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/382,423	**Applicant(s)** PHILYAW ET AL.	
	Examiner Reuben M. Brown	**Art Unit** 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the s ame day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice o f Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *4/4/07*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date o f filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally reje cted claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final acti on, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See enclosed Advisory Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

SCOTT E. BELIVEAU
PRIMARY PATENT EXAMINER

ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed 4/4/2007 have been fully considered but they are not persuasive. Applicant first argument, found on page 4 is in response to examiner's interpretation of applicant's prior discussion that the alerts in Kitsukawa are "contemporaneous" with the program. Applicant further explains that the remark more specifically is that, "it is the fact that the advertisement is associated with an icon at a particular time in the broadcast, but there is no disclosure of unique information that is transmitted at different time in the broadcast that are different from when the non-advertising content is displayed". First of all, examiner points out that it appears that applicant is referring to the claimed "at least a second portion of the unique information", which the claims do not recite as being displayed. The claims recite that the 'second portion'...'is associated with a the non-advertising content'...and 'is delivered to the consumer at the another desired time...'.

Secondly, it is pointed out that Yuen is relied upon to provide this teaching. In particular, Yuen discloses, "a viewer watching the channel that see/hears this announcement could preprogram his VCR to record the news or interview at the appropriate time. Thus, the concept of having a cue broadcast simultaneously with the advertisement that alerts a user that supplemental information regarding the advertisement will be broadcast at a later time can be implemented easily... and is not new to the state of the art", col. 2, lines 25-51.

As for applicant's second point made on page 5, that "Examiner is not pointing to anything in the combination of Kitsukawa & Yuen that in any way shows that there can be a pre-announcement portion and second portion that is associated with non-advertisement content wherein both occur at different times but are still part of the same program". It is asserted that Yuen provides the teaching of the 'first portion', since the teaching of a cue or alert in order to inform the viewers of supplemental information (of any content type), was old in the art at the time the invention was made, according to Yuen.

As for applicant's third point, which is in disagreement with examiner's earlier analysis that the claimed 'or the at least second portion that is delivered to the consumer at the another desired time for allowing the user to access the desired advertiser location through the personal computer based system', is recited in the alternative, and thus need not be considered by examiner. Examiner maintains the above line of reasoning. First, it is respectfully pointed out that the claims do not specifically recite that the 'unique information' is required to include both the 'first portion' and 'second portion'. In particular, claim 1 recites, 'at least a first portion...'... '**and** wherein the location of at least a second portion...is associated with the non-advertising content of the program broadcast', emphasis added. This language merely discusses that the location of the second portion is..., but does not recite the nature or content of the 'second portion'.

However, later on claim 1 recites, 'wherein the unique information that is provided at different times in the general broadcast comprises' (which examiner notes does not state 'consists' of)... 'the at least first portion'... '**or** the at least a second portion that is delivered...'. Therefore, since the claim did not define the 'unique information' as requiring both the first and second portion, then the 'or' statement is dispositive of the element being recited the alternative.

Even though examiner agrees that the claimed feature may be interpreted as argues by applicant, i.e., "Thus, the term "or" refers to the fact that when the unique information is present in a program, this being a temporal concept, it is either the first portion or the second portion", however, there is no language recited that requires this more narrow interpretation.

In light of the above arguments, examiner maintains the rejection of record.

Any response to this action should be mailed to:

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or faxed to:
(571) 273-8300, (for formal communications intended for entry)
Or:
(571) 273-7290 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F (9:00-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reuben M. Brown